

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Case No. 1:22-cv-4196

PREPARED FOOD PHOTOS, INC. f/k/a
ADLIFE MARKETING &
COMMUNICATIONS CO., INC.,

Plaintiff,

v.

SILVER STAR OF BROOKLYN /
BROOKLYN'S BEST INC., d/b/a SILVER
STAR,

Defendant.

COMPLAINT

Plaintiff Prepared Food Photos, Inc. f/k/a Adlife Marketing & Communications Co., Inc. (“Plaintiff”) sues defendant Silver Star of Brooklyn / Brooklyn’s Best Inc., d/b/a Silver Star (“Defendant”), and alleges as follows:

THE PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of Florida with its principal place of business located in Palm Beach County, Florida.

2. Defendant is a corporation organized and existing under the laws of the State of New York with its principal place of business located at 7520 Avenue V, Brooklyn, New York, 11234. Defendant’s agent for service of process is Michael Trotta, 7520 Avenue V, Brooklyn, New York, 11234.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§

1331 and 1338(a).

4. This Court has personal jurisdiction over Defendant because it has maintained sufficient minimum contacts with New York such that the exercise of personal jurisdiction over it would not offend traditional notions of fair play and substantial justice.

5. Venue properly lies in this district pursuant to 28 U.S.C. § 1400(a) because Defendant or its agents reside or may be found in this district. “A defendant ‘may be found’ wherever that person is amenable to personal jurisdiction.” Cavu Releasing, LLC. v. Fries, 419 F. Supp. 2d 388, 394 (S.D.N.Y. 2005). In other words, “[v]enue is proper in his District because the defendants are subject to personal jurisdiction in this District.” Noble v. Crazetees.com, 2015 U.S. Dist. LEXIS 130508, at *9 (S.D.N.Y. July 16, 2015).

FACTS

I. Plaintiff’s Business

6. Plaintiff is in the business of licensing high-end, professional photographs for the food industry.

7. Through its commercial website (www.preparedfoodphotos.com), Plaintiff offers a monthly subscription service which provides access to/license of tens of thousands of professional images.

8. As of the date of this pleading, Plaintiff charges its clients (generally, grocery stores, restaurant chains, food service companies, etc.) a monthly fee of \$999.00 for access to its library of professional photographs.

9. Plaintiff does not license individual photographs or otherwise make individual photographs available for purchase. Plaintiff’s business model relies on its recurring monthly subscription service such that Plaintiff can continue to maintain its impressive portfolio.

10. Plaintiff owns each of the photographs available for license on its website and serves as the licensing agent with respect to licensing such photographs for limited use by Plaintiff's customers. To that end, Plaintiff's standard terms include a limited, non-transferable license for use of any photograph by the customer only. Plaintiff's license terms make clear that all copyright ownership remains with Plaintiff and that its customers are not permitted to transfer, assign, or sub-license any of Plaintiff's photographs to another person/entity.

II. The Work at Issue in this Lawsuit

11. In 1997, a professional photographer created a photograph titled "Lasagna016" (the "Work"). A copy of the Work is exhibited below.



12. The Work was registered by Plaintiff (pursuant to a work-for-hire agreement with the author that transferred all rights and title in the photograph to Plaintiff) with the Register of Copyrights on October 14, 2016 and was assigned Registration No. VA 2-019-921. A true and correct copy of the Certification of Registration pertaining to the Work is attached hereto as

Exhibit “A.”

13. Plaintiff is the owner of the Work and has remained the owner at all times material hereto.

III. Defendant’s Unlawful Activities

14. Defendant is a company that sells homemade Italian products such as pastas and sauces in all the local supermarkets and specialty stores within the Tristate area.

15. Defendant advertises/markets its products primarily through its website (at <https://1338630.site123.me/>), social media (e.g. <https://www.facebook.com/silverstarco/>), and other forms of advertising.

16. After Plaintiff’s above-referenced copyright registration of the Work, Defendant published the Work on its website (at <https://1338630.site123.me/products/lasagna>) in connection with the marketing of its Italian products:

PRODUCTS



Captured by FireShot Pro: 23 अप्रैल 2022, 00:37:26
<https://getfireshot.com>

17. The foregoing display of the Work on Defendant's website was accessible and was in fact accessed from persons in the State of Florida.

18. Defendant is not and has never been licensed to use or display the Work. Defendant never contacted Plaintiff to seek permission to use the Work in connection with its website/advertising or for any other purpose – even though the Work that was copied is clearly professional stock photography that would put Defendant on notice that the Work was not intended for public use.

19. Defendant utilized the Work for commercial use – namely, in connection with the marketing of Defendant's products.

20. Upon information and belief, Defendant located a copy of the Work on the internet

and, rather than contact Plaintiff to secure a license, simply copied the Work for its own commercial use.

21. Through its ongoing diligent efforts to identify unauthorized use of its photographs, Plaintiff first discovered Defendant's unauthorized use/display of the Work in approximately April of 2022. Following Plaintiff's discovery, Plaintiff notified Defendant in writing of such unauthorized use. To date, however, Plaintiff has been unable to negotiate a reasonable license for the past infringement of its Work.

22. All conditions precedent to this action have been performed or have been waived.

COUNT I – COPYRIGHT INFRINGEMENT

23. Plaintiff re-alleges and incorporates paragraphs 1 through 22 as set forth above.

24. The Work is an original work of authorship, embodying copyrightable subject matter, that is subject to the full protection of the United States copyright laws (17 U.S.C. § 101 *et seq.*).

25. Plaintiff owns a valid copyright in the Work, having registered the Work with the Register of Copyrights and owning sufficient rights, title, and interest to such copyright to afford Plaintiff standing to bring this lawsuit and assert the claim(s) herein.

26. As a result of Plaintiff's reproduction, distribution, and public display of the Work, Defendant had access to the Work prior to its own reproduction, distribution, and public display of the Work on its commercial website.

27. Defendant reproduced, distributed, and publicly displayed the Work without authorization from Plaintiff.

28. By its actions, Defendant infringed and violated Plaintiff's exclusive rights in violation of the Copyright Act, 17 U.S.C. § 501, by reproducing, distributing, and publicly

displaying the Work for its own commercial purposes.

29. Defendant's infringement was willful as it acted with actual knowledge or reckless disregard for whether its conduct infringed upon Plaintiff's copyright. Defendant utilizes a copyright disclaimer on its website ("Copyright © 2022 All rights reserved"), indicating that Defendant understands the importance of copyright protection and intellectual property rights. Defendant clearly understands that professional photography such as the Work is generally paid for and cannot simply be copied from the internet.

30. Plaintiff has been damaged as a direct and proximate result of Defendant's infringement.

31. Plaintiff is entitled to recover its actual damages resulting from Defendant's unauthorized use of the Work and, at Plaintiff's election (pursuant to 17 U.S.C. § 504(b)), Plaintiff is entitled to recover damages based on a disgorgement of Defendant's profits from infringement of the Work, which amounts shall be proven at trial.

32. Alternatively, and at Plaintiff's election, Plaintiff is entitled to statutory damages pursuant to 17 U.S.C. § 504(c), in such amount as deemed proper by the Court.

33. Pursuant to 17 U.S.C. § 505, Plaintiff is further entitled to recover its costs and attorneys' fees as a result of Defendant's conduct.

34. Defendant's conduct has caused and any continued infringing conduct will continue to cause irreparable injury to Plaintiff unless enjoined by the Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a permanent injunction prohibiting infringement of Plaintiff's exclusive rights under copyright law.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- a. A declaration that Defendant has infringed Plaintiff's copyrights in the Work;

- b. A declaration that such infringement is willful;
- c. An award of actual damages and disgorgement of profits as the Court deems proper or, at Plaintiff's election, an award of statutory damages for willful infringement up to \$150,000.00 for each infringement of the Work;
- d. Awarding Plaintiff its costs and reasonable attorneys' fees pursuant to 17 U.S.C. § 505;
- e. Awarding Plaintiff interest, including prejudgment interest, on the foregoing amounts;
- f. Permanently enjoining Defendant, its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries and assigns, and all those in active concert and participation with Defendant, from directly or indirectly infringing Plaintiff's copyrights or continuing to display, transfer, advertise, reproduce, or otherwise market any works derived or copied from the Work or to participate or assist in any such activity; and
- g. For such other relief as the Court deems just and proper.

Demand For Jury Trial

Plaintiff demands a trial by jury on all issues so triable.

Dated: July 18, 2022.

COPYCAT LEGAL PLLC
3111 N. University Drive
Suite 301
Coral Springs, FL 33065
Telephone: (877) 437-6228
dan@copycatlegal.com

By: /s/ Daniel DeSouza
Daniel DeSouza, Esq.
New York Bar No.: 4290193

EXHIBIT “A”

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

United States Register of Copyrights and Director

Registration Number

VA 2-019-921

Effective Date of Registration:

October 14, 2016

Title

Title of Work: ADLIFE-COLLECTION-101216

Previous or Alternate Title: Group registration of photos published 01-08-1997 through 12-14-1997; about 220 photos total.

Content Title: BroccoliCheese002, 08-14-1997;
GrapefruitSlice001, 07-12-1997;
FruitBasket015, 11-22-1997;
Lasagna016, 04-23-1997;

LinguiniClamSauce001, 09-20-1997;
Manicotti001, 11-11-1997;
LasagnaLazy002, 04-15-1997;
LasagnaVegetable002, 08-19-1997;

LasagnaVegetable 003, 08-19-1997;
Manicotti002, 04-27-1997;
MeatLasagna012, 09-16-1997;
PennePastaPesto001, 06-10-1997;
Stromboli001, 08-14-1997;

SausagePepperOnion001, 11-15-1997;
PennePastaPesto002, 06-13-1997;
SausagePepper001, 08-21-1997;
PennePastaPesto003, 05-19-1997;
SausagePasta001, 03-09-1997;

PenneVeggieBake002, 03-11-1997;
SausagePepperOnion002, 07-10-1997;
ShellStuffed001, 07-14-1997;
SederPlate002, 04-10-1997;

Taquito003, 07-19-1997;
Taquito004, 04-05-1997;
ArrangementRoseAsst008, 06-27-1997;
RoseRedDozen003, 06-27-1997;
BrusselSproutBowl002, 03-24-1997;

SwaiFilet001, 08-25-1997;
SeafoodAsst007, 07-05-1997;
PottedMumAsst002, 09-15-1997;
Lobster005, 06-13-1997;

Lobster006, 08-05-1997;
CatfishFilet010, 11-23-1997;
CatfishFilet013, 04-09-1997;
CabbageAsst002, 02-11-1997;
Lobster012, 06-12-1997;

?ArrangementRoseRed001, 06-27-1997;
HaddockFilet003, 01-13-1997;
HaddockFilet004, 01-13-1997;
CatfishNugget002, 08-18-1997;
HaddockFilet006, 03-16-1997;

Halibut002, 06-10-1997;
CornButterSugarBasket003, 06-10-1997;
CornPeaBeanCarrot001, 05-19-1997;
MushroomSauteed001, 03-13-1997;

ClamFritter001, 01-26-1997;
LobsterTail001, 12-08-1997;
MackerelWhole002, 08-14-1997;
FishAsst001, 09-26-1997;
SeafoodAsst004, 08-11-1997;

SeafoodAsst008, 11-15-1997;
SeafoodAsst010, 07-05-1997;
CakeCheese014, 11-08-1997;
RedSnapper003, 10-22-1997;

Clambake003, 05-19-1997;
Clambake005, 12-10-1997;
Clambake008, 02-08-1997;
Clambake006, 04-09-1997;
Clambake007, 09-15-1997;

SalmonFilet007, 04-09-1997;
SalmonFilet008, 04-09-1997;
Scallop001, 04-21-1997;
TunaCasserole001, 11-13-1997;

TunaSalad004, 11-12-1997;
TunaSaladGrilled001, 04-13-1997;
Tilapia002, 11-11-1997;
Tilapia010, 05-19-1997;
Tilapia018, 04-18-1997;

Peapod001, 05-19-1997;
PeaSnow001, 02-11-1997;
CakeCheeseChocolate002, 08-13-1997;
CakeCheeseChocolate001, 03-19-1997;
CakeCheeseCherry001, 08-13-1997;

?CakeCheeseBlueberry001, 04-15-1997;
CakeCheeseAsst002, 10-11-1997;
CakeCheeseAsst001, 08-13-1997;



CakeCheese017, 04-08-1997;

CakeCheese016, 11-11-1997;
CakeCheese015, 06-19-1997;
CakeCheese013, 11-08-1997;
CakeCheese012, 11-08-1997;
CakeCheese011, 11-08-1997;

CakeCheese009, 05-23-1997;
CakeCheese008, 12-14-1997;
CakeCheese007, 08-13-1997;
CakeCheese006, 10-08-1997;

CakeCheese005, 02-18-1997;
CakeCheese004, 08-13-1997;
CakeCheese003, 03-19-1997;
CakeCheese002, 05-20-1997;
CakeCheckerboard001, 11-08-1997;

CakeChampagne001, 11-21-1997;
CakeCarrot007, 05-13-1997;
CakeCarrot006, 11-08-1997;
CakeCarrot005, 03-25-1997;

CakeCarrot004, 03-17-1997;
CakeCarrot003, 08-13-1997;
CakeCarrot002, 02-08-1997;
CakeCarrot001, 11-10-1997;
CakeCandyCane001, 12-11-1997;

CakeButterCreme003, 08-13-1997;
CakeButterCreme002, 08-13-1997;
CakeButterCreme001, 08-13-1997;
CakeBundtCinnamonSlice001, 02-13-1997;
CakeBostonCremeRoll001, 08-13-1997;

CakeBostonCoffee003, 06-10-1997;
CakeBlueberry001, 07-18-1997;
CakeBlackForest005, 08-19-1997;
CakeBlackForest004, 08-13-1997;
?CakeBlackForest003, 09-08-1997;
CakeBlackForest001, 08-13-1997;
CakeBirthday005, 11-10-1997;
CakeBirthday003, 08-20-1997;
CakeBirthday002, 04-12-1997;

CakeBirthday001, 06-15-1997;
CakeBatter001, 06-25-1997;
CakeAsst005, 10-22-1997;
CakeAsst004, 11-18-1997;

CakeAsst003, 10-14-1997;
CakeAsst002, 11-17-1997;
CakeAsst001, 09-13-1997;
CakeAppleCrumb001, 08-13-1997;
CakeAppleCoffee001, 08-13-1997;

CakeAngelFoodStrawberry001, 11-15-1997;

CakeAngelFoodBerries001, 04-11-1997;
CakeAngelFood015, 07-13-1997;
CakeAngelFood014, 04-23-1997;

CakeAngelFood013, 02-25-1997;
CakeAngelFood012, 09-10-1997;
CakeAngelFood011, 08-13-1997;
CakeAngelFood010, 11-24-1997;
CakeAngelFood009, 08-13-1997;

CakeAngelFood008, 08-13-1997;
CakeAngelFood007, 08-13-1997;
CakeAngelFood005, 11-22-1997;
CakeAngelFood004, 06-20-1997;

CakeAngelFood003, 08-13-1997;
CakeAngelFood002, 08-13-1997;
CakeAngelFood001, 08-13-1997;

Brownie001, 08-21-1997;
Brownie002, 02-08-1997;
Brownie2Bite001, 09-05-1997;
Brownie2Bite002, 09-05-1997;
Brownie2Bite003, 09-05-1997;
Brownie2BiteStack001, 09-05-1997

Brownie003, 06-18-1997;
Brownie004, 06-08-1997;
Brownie005, 09-22-1997;
Brownie006, 02-21-1997;
Brownie007, 03-27-1997;
Brownie008, 04-07-1997;
Brownie009, 08-21-1997;

BrownieAsst001, 09-22-1997;
BrownieAsst002, 03-09-1997;
BrownieBites001, 01-08-1997;
BrownieBlonde001, 06-18-1997;
BrownieBlonde002, 08-05-1997;
BrownieBlonde003, 12-13-1997;
BrownieCaramel001, 01-12-1997;

BrownieCreamCheese001, 09-23-1997;
BrownieCreamCheese001, 03-09-1997;
BrownieFrosted001, 07-14-1997;
BrownieFrosted002, 07-14-1997;
BrownieFrosted003, 07-14-1997;

BrownieCreamCheese001, 09-23-1997;
BrownieCreamCheese002, 03-09-1997;
BrownieFrosted001, 07-14-1997;
BrownieFrosted002, 07-14-1997;
BrownieFrosted003, 07-14-1997;

BrownieFrosted004, 09-23-1997;
BrownieFrosted005, 07-14-1997;
BrownieFrosted006, 03-09-1997;
BrownieM&M001, 03-09-1997;



BrownieOreo001, 03-09-1997;
BrownieWalnut001, 10-13-1997;
BreadPumpkinSpice001, 11-15-1997;
BreadRainbow001, 08-13-1997;
BreadRaisin001, 07-12-1997;
BreadRaisin002, 07-12-1997;
BreadRaisin003, 07-12-1997;
BreadRaisin004, 08-13-1997;
BreadRaisin005, 10-08-1997;

BreadRaisin006, 05-21-1997;
BreadRaisin007, 07-22-1997;
BreadRaisinBasket001, 08-13-1997;
BreadRoastedGarlic001, 07-12-1997;
BreadRoastedGarlic002, 10-11-1997;
BreadRosemary001, 11-10-1997;
BreadRosemary002, 11-10-1997;
BreadRosemary003, 11-10-1997;
BreadRosemary004, 11-03-1997;
BreadPumpkin002, 11-10-1997;

BreadRosemaryOliveOil002, 06-22-1997;
BreadRoundVegetable001, 01-12-1997;
BreadRustic001, 03-11-1997;
BreadRusticWheat001, 08-13-1997;

BreadRye001, 05-08-1997;
BreadRye002, 05-16-1997;
BreadRye003, 07-08-1997;
BreadRyeBasket001, 08-13-1997;
BreadRyeBasket002, 08-13-1997;

BreadRyeSliced001, 03-15-1997;
BreadRyeSliced002, 11-21-1997;
BreadRyeSliced003, 12-06-1997;
BreadSanta001, 11-10-1997;

BreadSanta002, 11-18-1997;
BreadScala001, 08-13-1997;
BreadScala002, 08-13-1997;
BreadScala003, 04-20-1997;
BreadSixGrain001, 08-13-1997;
BreadSoda001, 03-12-1997;
BreadSoda003, 02-24-1997;
BreadSourDough002, 11-15-1997;
BreadSourDoughBasket001, 08-13-1997;

BreadSplitTop001, 08-13-1997;
BreadSplitTop002, 08-13-1997;
BreadSplitTop003, 07-07-1997;
BreadStick001, 08-13-1997;
BreadStick003, 11-27-1997;

BreadStick004, 11-20-1997;
BreadStick005, 12-12-1997;
BreadStickMarinara001, 02-24-1997;
BreadSwissGrain001, 08-13-1997;

?BreadTurkey001, 11-13-1997;
BreadTurtle001, 11-13-1997;
BreadTuscanBoule001, 01-27-1997;
BreadTuscanBoule002, 01-27-1997;
BreadTuscanBoule003, 01-27-1997;
BreadTuscanBoule004, 01-27-1997;
BreadTuscanBoule005, 01-27-1997;

BreadVienna001, 11-13-1997;
BreadWheat001, 04-14-1997;
BreadPumpkin001, 12-15-1997;
BreadWheat003, 08-13-1997;
BreadWheat004, 08-09-1997;
BreadWheat005, 04-11-1997;

BreadWheat006, 05-19-1997;
BreadWheatHomestyle001, 08-13-1997;
BreadWheatMountainTop, 08-13-1997;
BreadWhite001, 07-12-1997;
BreadWhite002, 02-12-1997;
BreadWhite003, 08-12-1997;
BreadWhite004, 03-24-1997;

BreadWhiteBasket001, 08-13-1997;
BreadWhiteBasket002, 08-13-1997;
BreadWhiteHomestyle001, 08-13-1997;
BreadWhiteToasted001, 11-12-1997;
BreadWholeGrain001, 03-25-1997;
BreadWholeGrainBasket001, 01-20-1997;
BreadWholeWheat002, 03-12-1997;

BreadZucchini001, 01-14-1997;
BreadZucchini002, 11-14-1997;
BreadZucchini003, 08-13-1997;
BreadZucchini004, 11-09-1997.

0000VA00020199210504*

Completion/Publication

Year of Completion: 1997
Date of 1st Publication: January 08, 1997
Nation of 1st Publication: United States

Author

- **Author:** Adlife Marketing & Communications Co. Inc., Employer-for-Hire of Joel Albrizio
Author Created: photograph
Domiciled in: United States

Copyright Claimant

Copyright Claimant: Adlife Marketing & Communications Co. Inc.
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Rights and Permissions

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Address: PO BOX 790
COTUIT, MA 02635-0790 United States

Certification

Name: MILTON M OLIVER
Date: October 14, 2016
Applicant's Tracking Number: 873-057-312

Copyright Office notes: Regarding publication: range of publication dates is 1/08/1997 to 12/14/1997

EXHIBIT “B”



PreparedFoodPhotos.com
P.O. Box 1000 • Slatersville, RI. 02876
licensing@PreparedFoodPhotos.com
1-866-609-1548

Re: Claim Number: 5224896593213217481
FRE 408 SETTLEMENT COMMUNICATION

Monday, March 7, 2022

Company Name

Silver Star of Brooklyn

Company Address

6221 18th Ave
Brooklyn, NY 11204

Company Phone Number

917-881-3007

URL Containing Image

<https://1338630.site123.me>

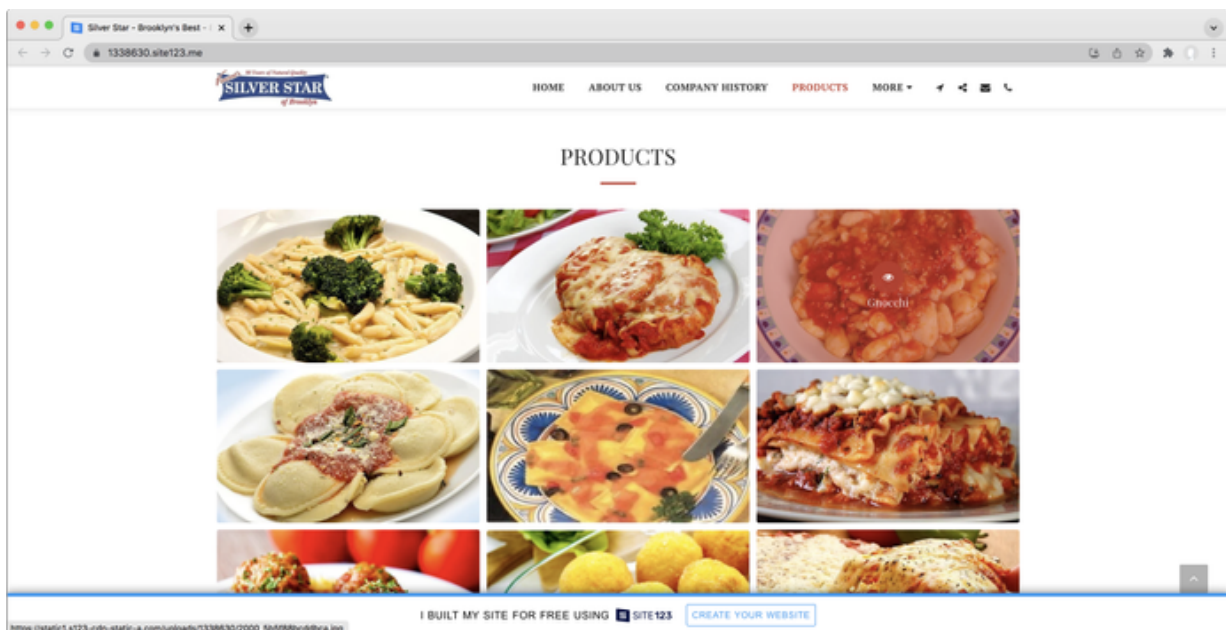


Image Name

Lasagna016

Registration Number

VA0002019921



COMPANY HISTORY



In 1910 Vincenzo Aversa left the shores of his home in Palermo, Italy for a new life in America. When they arrived they quickly settled in with family and friends in the Bensonhurst section of Brooklyn, NY. Vincenzo's dad Francesco quickly established himself as a premiere pasta artisan which was his trade back home in Italy. Within a few years Francesco opened the Bayridge Macaroni Company. Vincenzo had worked with his dad in the store as a boy where he developed his skills and a passion for the pasta business. It was in 1933 when Vincenzo desired to expand his father's business into stuffed pasta's, Specialties that were made exclusively in the Aversa home. Vincenzo established a new name to sell his high quality products under and that name of course was SILVER STAR. At first all they items were made by hand using nothing but high quality natural ingredients. As the demand for these specialty items grew Vincenzo's desire was to produce these same items on a larger scale never sacrificing his favorite word Quality.

It was now Vincenzo's mission to automate the process so he called on a long time friend who I only know as (Mr. Lombi) Mr. Lombi was an engineer and a machinist and together they developed the first automated ravioli machines. These basic principles are still used in today's pasta equipment and there still plenty of the old style Lombi machines still in operation. Now that production capabilities where expanded Vincenzo was able to start producing product in larger quantities to meet his demands that now have surpassed just his local neighborhood and had reach the 5 boroughs and Long Island. It was now time to incorporate the business while meeting with his attorney the attorney asked Vincenzo you're an Italian immigrant where did the name Silver Star come from, Vincenzo's answer was simple he had such a love for his new country the highest honor that could be given to a soldier in America was a Silver Star.

In 1950 Silver Star moved into a 25,000 square foot factory on McDonald Ave in Brooklyn. Sales have become so strong that Silver Star was being sold in all the local super markets and specialty stores within the Tristate area along with local foodservice distributors who supplied local airlines and cruise ships and restaurants. Vincenzo passed away in 1969 leaving the company to his daughter Rosalie Trotta and his brother Anthony Aversa. Silver Star under the new leadership continued to grow over the next 15 years when Rosalie Trotta acquired 100% ownership of Silver Star. Silver Star through the next decades has continued to grow reaching annual sales of 12 million with customers on the east coast, Arizona, Nevada, California.

Silver Star is one of the most recognized names in the pasta industry and has been for 80 years.

Silver Star The Original Ravioli.....

"Take home an Italian tonight"

PRODUCTS

